

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky no. 04-32102

David R. Moe and Vicki Moe

Chapter 7

Debtors

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MOTION FOR HEARING AND  
MOTION FOR SANCTIONS FOR  
VIOLATION OF AUTOMATIC STAY

To: YOLANDA McKENZIE

Debtors move the Court:

1. Debtors move the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion before the Honorable Gregory F. Kishel, Judge of Bankruptcy Court, at 10:00 a.m. on September 28, 2004 in Courtroom No. 228B, United States Court House, at 316 North Robert Street, in St. Paul, Minnesota 55101
3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on September 24, 2004, which is three days before the time set for the hearing, or filed and served by mail not later than September 21, 2004, which is seven days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §157 and 1334, Fed. R. Bankr. 5005 and Local Rule 1070-1. This is a core proceedings. The

petition commencing the case under Chapter 11 was filed on April 7, 2004 (the “Petition Date”).

5. This motion arises under 11 U.S.C. §362 and 11 U.S.C. §362(h) . This motion is filed under Fed. R. Bankr.. 9014 and Local Rules 9006-1, 9013-3 and 9017-1.

**Debtors requests relief as set forth below.**

6. The Debtors filed their Petition for Relief under Title 11 of the United States Code on April 7, 2004. Upon such filing, the automatic stay of Section 362 of such Code became effective.
7. That on July 6, 2004 Debtor contacted Respondent’s attorney upon receipt of a Summons and Complaint informing her attorney, Stephen H. Parsons, that a Chapter 7 Bankruptcy had been filed. (Exhibit “A” & “B”)
8. That on or about July 21, 2004 Respondent contacted Debtor’s attorney acknowledging the receipt of the bankruptcy notice.(Exhibit “C”). That on July 21, 2004 Debtors notified Respondent that her action against Debtor David Moe was under the jurisdiction the Bankruptcy Court. (Exhibit “D”)
9. That on August 27, 2004 an Amended Complaint was received from Debtor. It clearly indicates that Yolanda McKenzie is still pursuing a judgment against Debtor David Moe. (Exhibit “E”)
10. Notwithstanding such notification and notice, Respondent nevertheless and in violation of said automatic restraint continued to attempt to collect a debt against the Debtors, which debt preceded the filing of the herein Chapter 7 Bankruptcy and was subject of the automatic stay.

11. By this Motion, Debtors request a determination that Respondent Yolanda McKenzie is in contempt of this court for violation of the automatic stay of Section 362 of Title 11 of the United States Code and for such sanctions or penalties for civil contempt as this court shall see fit to impose.
12. Further, for an order withdrawing jurisdiction from the Hennepin County District Court.

WHEREFORE, Debtors move the Court for an order awarding damages, their costs and attorney's fees to them for the willful violation of the automatic stay by Yolanda McKenzie, and withdrawing jurisdiction over this matter from the Hennepin County District Court.

Dated: September 7, 2004

/e/ Stephen J. Beseres  
Stephen J. Beseres #7912  
Attorney for Debtors  
4124 Quebec Avenue North  
New Hope, MN. 55427  
(763) 533-4999



***STEPHEN J. BESERES***  
***ATTORNEY AT LAW***

***4124 QUEBEC AVENUE NORTH***

***SUITE 303***

***NEW HOPE, MINNESOTA 55427***

***(763) 533 4999***

July 6, 2004

Yolanda McKenzie  
2711 Colfax Avenue North  
Mpls, MN. 55408

Dear Ms. McKenzie:

Enclosed and served upon you please find Mr. David R. Moe's notice of Bankruptcy filing. I have provided a copy of this to Mr. Parsons.

Very Truly Yours,

Stephen J. Beseres  
SJB/db  
Enc:



**STEPHEN J. BESERES**  
**ATTORNEY AT LAW**  
4124 QUEBEC AVENUE NORTH  
SUITE 303  
NEW HOPE, MINNESOTA 55427  
(763) 533 4999

July 6, 2004

Stephen H. Parsons  
Attorney at Law  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN. 55402-4511

Re: David R. Moe

Dear Mr. Parsons:

Mr. Moe brought into my office a copy of a Summons and Complaint that he apparently had received from your office.

I am writing for two reasons. First, Mr. Moe indicates that he sold Old Dominion to Molly Heise in November 2001. After the sale, he remained on only as an employee. He was no longer an officer nor agent.

Secondly, to provide you with Mr. Moe's notice of bankruptcy filing. I will be serving a copy of the Notice upon Ms. McKenzie.

If you have any questions, please feel free to contact my office.

Very Truly Yours,

Stephen J. Beseres  
SJB/db  
Enc:

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EXHIBIT B

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# Mansfield Tanick & Cohen P.A.

*Attorneys at Law*

Stephen H. Parsons  
612/341-1235 (DD)  
sparsons@mansfieldtanick.com

July 20, 2004

Stephen J. Beseres, Esq.  
4124 Quebec Avenue North  
Suite 303  
New Hope, MN 55427

RE: McKenzie v. Financial Equity Solutions, LLC, et al.  
Court File No. CT 04-009438  
Our File No. 21610.01

Dear Steve:

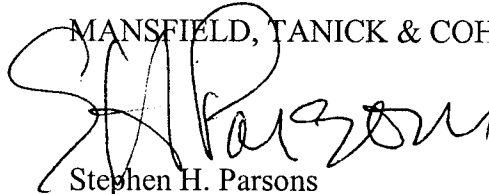
Thank you for your letter of July 6, 2004 regarding Mr. Moe's bankruptcy. I am willing to grant Mr. Moe an indefinite extension of time to answer the Complaint, provided that he is willing to cooperate in supplying information to us. I also want Mr. Moe to talk to me truthfully about what he knows about the McKenzie transaction, since what he has already told me varies from what he told to another attorney.

The Secretary of State's office still finds Mr. Moe as the registered agent for Old Dominion Title Services. As best as I can tell, he and Old Dominion are one. If Mr. Moe did sell Old Dominion to someone else, I would like details on the transaction.

Please contact me to discuss this.

Sincerely,

MANSFIELD, TANICK & COHEN, P.A.



Stephen H. Parsons

SHP:amc/#351964

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## EXHIBIT C

1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4511

[www.mansfieldtanick.com](http://www.mansfieldtanick.com)

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Saint Louis Park, Minnesota

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Attorneys also licensed in California,  
Colorado, District of Columbia,  
Illinois, New York and Wisconsin.





**STEPHEN J. BESERES  
ATTORNEY AT LAW**

**4124 QUEBEC AVENUE NORTH  
SUITE 303**

**NEW HOPE, MINNESOTA 55427**

**(763) 533 4999**

**July 21, 2004**

Stephen H. Parsons  
Attorney at Law  
1700 Pillsbury Center South  
220 south Sixth Street  
Mpls., MN. 55402-4511

Re: McKenzie v. Financial Equity Solutions, LLC, et al.

Dear Mr. Parsons:

I am not representing Mr. Moe in your action. I had previously written to provide you and your client with notice of Mr. Moe's bankruptcy filing and to add your client as a creditor in that action. Since Mr. Moe filed a Chapter 7 bankruptcy, and you were given notice of that filing, your action against Mr. Moe would now be under the jurisdiction of the bankruptcy court.

Respectfully,

Stephen J. Beseres  
SJB/db  
Cc: D. Moe

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EXHIBIT D

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*Attorneys at Law*

August 24, 2004

All attorneys licensed in Minnesota.  
Attorneys also licensed in California,  
Colorado, District of Columbia,  
Illinois, New York and Wisconsin.



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Fraud

Yolanda McKenzie,

Court File No. CT 04-009438

Plaintiff,

v.

Financial Equity Solutions, a  
Minnesota Limited Liability  
Corporation, Joshua Boss, Alvah  
King, Old Dominion Title Services,  
Inc., David R. Moe, Chicago Title  
Insurance Company, JP Morgan  
Chase Bank, Homestead Mortgage  
Corporation, a Minnesota corporation,  
and Does 1 through 10,

**FIRST AMENDED  
COMPLAINT**

Defendants.

**YOLANDA McKENZIE**, for her Complaint herein, states and alleges as follows:

1. This is an action for damages, injunctive and declaratory relief to save Yolanda McKenzie's home from a fraudulent predatory lending and equity-stripping scheme.

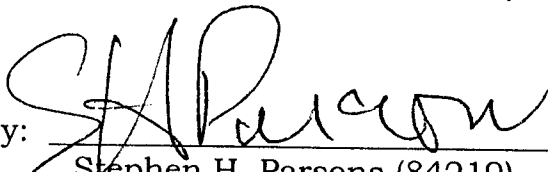
**PARTIES**

2. Plaintiff Yolanda McKenzie is a single mother of four minor children and resides at 2711 Colfax Avenue North, in the city of Minneapolis, county of Hennepin, state of Minnesota – a single family home that she purchased on April 19, 1999 ("the home"). The legal description of the home is:

- D. Awarding damages against FES, Boss, King, Homestead, Old Dominion, Moe, and Chicago jointly and severally, for an amount in excess of \$50,000, plus reasonable attorneys fees, interest, costs and disbursements as allowed by law;
- E. Awarding to Plaintiff the damages constituting the amount by which the defendants were unjustly enriched by the transaction with Plaintiff;
- F. Awarding to Plaintiff her reasonable attorneys fees, interest, costs of investigation, costs and disbursements as allowed by law, and
- G. Such further relief as the court deems just and equitable.

**MANSFIELD, TANICK & COHEN, P.A.**

Date: 8/25/04

By: 

Stephen H. Parsons (84219)  
Richard J. Fuller (32669)  
Earl H. Cohen (17632)  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis MN 55402-4511  
Phone: (612) 339-4295  
Fax: (612) 339-3161

**ATTORNEYS FOR PLAINTIFF  
YOLANDA McKENZIE**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that pursuant to Minn. Stat. 549.211, monetary and other sanctions may be imposed if the Court should find that the undersigned has violated Minn. Stat. § 549.211, Subd. 2, by presenting a

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky no. 04-32102

David R. Moe and Vicki Moe

Chapter 7

Debtors

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MEMORANDUM

The impact of the automatic stay is to place jurisdiction in the bankruptcy court over all matters subject to the automatic stay, both withdrawing the jurisdiction of other tribunals and rendering orders obtained in violation of the stay void. LaBarge v. Vierkant (in re Vierkant), 240 B.R. 317, 322-25 (8<sup>th</sup> Cir. BAP 1999)

The Code puts the burden of establishing the validity of an action in violation of the stay on the party seeking to uphold the action. In re Soares, 107 F.3<sup>rd</sup> 976 – “Treating an action taken in contravention of the automatic stay as void places the burden of validating the action after the fact squarely on the shoulders of the offending creditor.”

The bankruptcy court is the only court that has authority to punish parties for violating the automatic stay. Eastern Equipment & Services Corp. v. Factory Point National Bank, 236 F 3d. 117, 120-21 (2d Cir. 2001)

Dated: September 7, 2004

/e/ Stephen J. Beseres  
Stephen J. Beseres #7912  
Attorney for Debtors  
4124 Quebec Avenue North  
Suite 303  
New Hope, MN. 55427  
(763) 533- 4999

STATE OF MINNESOTA )  
 )ss  
COUNTY OF HENNEPIN )

Stephen J. Beseres, of the City of Golden Valley, County of Hennepin, in the State of Minnesota, being duly sworn, says that on September 7<sup>th</sup>, 2004, he served the annexed Notice of Motion, Memorandum of Law, and Order on:

Office of the U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

Michael J. Iannacone  
Bankruptcy Trustee  
8687 Eagle Point Boulevard  
Lake Elmo, MN 55042

Stephen H. Parsons  
Mansfield Tanick & Cohen PA  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4511

by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at New Hope, Minnesota, at their last known addresses.

/s/ Stephen J. Beseres

Subscribed and sworn to before me  
this \_\_\_\_ day of September, 2004.

\_\_\_\_\_  
Notary Public

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Bky no. 04-32102

David R. Moe and Vicki Moe

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**ORDER**

The above-entitled matter came on for hearing on September 28, 2004, before the Honorable Gregory F. Kishel, Judge of Bankruptcy Court, upon the Motion of Debtors for sanctions against Yolanda McKenzie, creditor, for violation of the automatic stay. Appearances were as noted in the record.

The Court, having heard the arguments of counsel, and being duly advised in the premises,

**IT IS HEREBY ORDERED,**

1. The Court finds that Yolanda McKenzie is in contempt of this court for violation of the automatic stay of Section 362 of Title 11 of the United State Code.
2. The Court withdraws jurisdiction over this matter from the Hennepin County District Court.
2. That debtors are awarded damages for costs and attorney's fees for this motion in the amount of \$2,000.00, to be paid to them by Yolanda McKenzie.

BY THE COURT:

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Judge of Bankruptcy Court